

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Marketlink Technologies LLC v Storage Computer Corp**

Docket No. **260458**

L.C. No. **2001-036743-CK**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The claim of appeal from the January 5, 2004 judgment in plaintiff's favor is DISMISSED for lack of jurisdiction since appellant failed to file the claim within 21 days of the entry of the June 3, 2004 order denying plaintiff's motion for statutory attorney fees that it had requested in its complaint. MCR 7.202(6)(a)(i), 7.203(A)(1), and 7.204(A)(1)(b). Even if this Court used the September 7, 2004 order as the order disposing of plaintiff's motion, this Court would still lack jurisdiction as appellant failed to file the appeal within 21 days of the entry of this order as well. *Id.* The time to file the claim was not tolled by plaintiff's filing of a motion for case evaluation sanctions. *Baitinger v Brisson*, 230 Mich App 112, 116; 583 NW2d 481 (1998). If appellant still wants to challenge the January 2004 judgment, it must file a delayed application for leave to appeal under MCR 7.205. See MCR 7.203(B)(5).

The claim of appeal from the January 4, 2005 order denying appellee's motion for case evaluation sanctions is DISMISSED for lack of jurisdiction seeing as appellant is not aggrieved by this final order. MCR 7.202(6)(a)(iv) and 7.203(A).

In view of the fact that this Court lacks jurisdiction over the underlying claim, the cross-appeal must be dismissed as well since no appeal of right exists. MCR 7.207(A)(1). Even though the January 4, 2005 order denying appellee's motion for case evaluation sanctions is a final order appealable in and of itself, this Court cannot treat appellee's claim of cross-appeal as a claim of appeal seeing as the pleading was not filed within 21 days of the entry of the January 2005 order. MCR 7.202(6)(a)(iv), 7.203(A)(1), and 7.204(A)(1)(a).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR - 4 2005

Date

Sandra Schultz Mengel
Chief Clerk